IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.9.2006

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S. JANARATHANA RAJA

Contempt Petition No.190 of 2006

N.R.Perumal .. Petitioner

Vs.

1. Dr.S.Murugan
The Director of Public Health and
Preventive Medicine
DMS Office Compound
Chennai 6.

2. M.R.Radhakrishnan
The Deputy Director of Health Services
Dindigul. .. Respondents

For Petitioner : Mr.M.Muthupandian
For Respondents : Mr.G.Sankaran, AGP

O R D E R

(Made by P.D.DINAKARAN, J.)

The contempt petitioner is the applicant in O.A.No.3627 of 2001 wherein he has challenged the proceedings of the State Government dated 14.5.1990 and also sought a direction to refrain from making any recovery in pursuance of the said order and for further direction to the Government and the respondents therein to make payment of arrears of pay.

2. The Tribunal, by order dated 16.7.2001 in O.A.No.3627 of 2001, held that the mistake committed by the officer, which was ratified later, cannot be taken into consideration and the petitioner cannot be compelled to repay the excess amount disbursed to him and further directed the Director of Public Health and Preventive Medicine, Chennai, to recommend fixation of final pension to the Accountant General, Chennai.

3. It is clear from the above order that the Tribunal had only restrained the Government and the Director of Public Health and Preventive Medicine, Chennai, from recovering the amount paid

excessively to the petitioner. But, with regard to fixation of final pension, the Tribunal had directed the Director of Public Health and Preventive Medicine, Chennai, to recommend fixation of final pension to the Accountant General, without indicating anything as to how the final pension has to be calculated. However, the Tribunal had not directed the Government and the Director of Public Health and Preventive Medicine, Chennai, to fix the final pension based on the higher scale of pay drawn by the petitioner.

4. Concededly, the petitioner had not filed any appeal with regard to the direction made by the Tribunal to the Director of Public Health and Preventive Medicine, Chennai, as referred to above. On the other hand, the Government have challenged the said order of the Tribunal in W.P.No.21458 of 2001 and the same was disposed of by this Court, by order dated 10.8.2004, obviously following the order of the Supreme Court in Shyam Babu Verma v. Union of India ((1994) 2 SCC 521) and a decision of the Division Bench of this Court in State of Tamil Nadu & Others v. Pallivasal Primary School (2004 (2) LW 591).

5. The Apex Court in Shyam Babu Verma case, held that it shall only be just and proper not to recover any excess amount which has already been paid to the petitioner therein, as the petitioner therein was not at fault.

6. Similarly, the Division Bench of this Court in Pallivasal Primary School case, held that recovery of the salary paid to the petitionera therein on the ground that prior to their completing the training, they could not have held the post was not justified for two reasons, viz. the petitioners therein/teachers were not at fault and on the other hand, they were actually teaching and discharging their work. Mere want of requisite qualification, therefore, cannot be a ground for recovery.

7. In both the decisions cited supra, there is no direction to pay the final pension based on scale of pay. On the other hand, the said decisions relates only with regard to the recovery of the excessive salary paid to the petitioner therein.
P.D.DINAKARAN, J,
AND
P.P.S.JANARTHANA RAJA, J.

8. If that be so, the dismissal of W.P.21458 of 2001 filed by the Government, by order dated 10.8.2004, would not automatically confer any right on the petitioner to seek pension based on the salary paid in excess, as, what was ordered by the Apex Court and Division Bench in the case referred to above was only not to recover the salary paid in excess. But, there was no positive direction to settle the pension based on the salary paid in excess. Hence, except to direct the Director of Public Health and Preventive Medicine, Chennai to pass necessary orders for fixing the final pension, strictly in accordance with Rules, within twelve weeks from the date of the receipt of a copy of this order, no further order is required. If the petitioner has got any grievance on the recommendation to be made by the Director of Public Health and Preventive Medicine, Chennai, he is at liberty to work out his rights independently in appropriate proceedings, and not by invoking contempt jurisdiction.

The contempt petition is closed. The contemners are discharged.

kpl

[vsant 7914]